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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,365	03/23/2004	Kouki Fukui	2004_0447A	9699
513	7590	01/09/2006	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			BRINSON, PATRICK F	
2033 K STREET N. W.			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20006-1021			3754	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/806,365	FUKUI ET AL.	
	Examiner	Art Unit	
	Patrick F. Brinson	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/29/2004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 10, 4 of which come after the original claim 10, have been renumbered 11-14.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29,

2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-6 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. 6,528,137 to **Franosch et al.**

The **Franosch et al.** reference discloses a flexible hose comprising a hose wall, wherein at least one of the resin layers (2) of the hose is a gas barrier layer. The resin layers are bonded to each other, with the outer layers formed of suitable materials, such as polyamides, polyolefins and polyketones. The barrier layer is formed from suitable polyester resins, such as polybutylene terephthalate. The barrier layer, as shown in fig. 2, is corrugated with concaves and convexes formed thereon, and the outer resin layer is laminated on the outer surface and/or the inner surface of the gas barrier layer to level the concaves and convexes of the gas barrier and provide a smooth surface, as recited in claims 3-6. **Franosch et al.** does not disclose the method from which the hose is made. The claim phrases “formed by laminating a plurality of resin layers in a radial direction” and “formed by spirally winding a gas barrier resin strip and by thermally fusing or bonding axially adjoining edges of said strip to each other” are being treated as a product by process limitation; that is, that the claims are NOT limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same

or similar is found, a 102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See MPEP 2113.

This, even though **Franosch et al.** does not disclose the hose formed by laminating a plurality of resin layers in a radial direction nor fusing axially adjoining edges of the strip to each other, it appears that the product of **Franosch et al.** would be the same or similar as that claimed, especially since both the Applicant's product and the prior art product is a multilayer resin pipe with the internal resin layer functioning as a gas barrier.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Franosch et al.** in view of U.S. 6,354,331 to **Fisher et al.**

The patent to **Franosch et al.** discloses the outer resin as being formed from suitable resins such as polyamides and polyolefins, but does not disclose the layer laminated on the gas barrier layer as being formed from urethane resin nor does it

disclose the respective resin layers as being formed from non-chlorine transparent thermoplastic resin. The patent to **Fisher et al.** discloses a flexible plastic tubing formed from suitable transparent materials such as polyamides, urethanes and polyester resins. It is disclosed that the material is transparent or slightly opaque to provide a means for viewing the contents of the tubing flowing therethrough. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute for the outer resin of **Franosch et al.** a non-chlorine transparent resin, such as urethane, and to substitute for the polyester resin of **Franosch et al.** a transparent polyester resin, both as taught by **Fischer et al.** in order to provide resins that not only allow viewing of the contents flowing therethrough, but to provide the flexible hose with layers that do not contain polyvinyl chloride, thus being environmental friendly.


Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Crisman et al., Guest and Little et al. are all pertinent to Applicant's invention in disclosing flexible hoses including barrier layers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Patrick F. Brinson
Primary Examiner
Art Unit 3754

P. F. Brinson
January 5, 2006